IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5729 OF 2006

Raju Gajanan Koparde
Age: 45 years, Occ: Business,
Laxmi, Opp. Adarsh Mangal
Karyalaya, Shaniwar Peth,
Miraj, Dist: Sangli .....Petitioners.

V/s

1. State of Maharashtra,through
its Secretary, Department of
Technical Education,
Mantralaya, Mumbai 400032

2. Director of Technical Education,
3, Mahapalika Marg, Post Box No.1967,
Mumbai - 400 001. ....Respondents.

Mrs. A.N. Helekar for the Petitioners.

Mr. A.A. Kumbhakoni, Associate Advocate General with Ms. P.S. Cardoza, AGP for the Respondents.

ALONGWITH
WRIT PETITION NO.5741 OF 2006

Mrs. Nandita Milind Karoor
Age: 41 years, at present residing at
9 Jeevandhara, Dr. Ambedkar Road,
Bandra (West), Mumbai- 50. ....Petitioner.

V/s

1. State of Maharashtra
through its Department of Technical
Education, Mantralaya, Mumbai.

2. Directorate of Technical Education,
Maharashtra State. ....Respondents.

Mr. V.M. Thorat for the Petitioner.

Mr. A.A. Kumbhakoni, Associate Advocate General with Mr. P.I. Khemani, AGP for the Respondents.

ALONGWITH
WRIT PETITION NO.5742 OF 2006

Shri Kantilal Jainarayan Singhal
Age: 42 years, at present residing
at 118, Agarwal Nagar, Vashi Naka,
R.C. Marg, Chembur, Mumbai-74. ....Petitioner.

V/s

1. State of Maharashtra,
through its Department of
Technical Education, Mantralaya,
Mumbai.

2. Directorate of Technical Education
Maharashtra State,
3, Mahapalika Marg, Opp. Metro
Cinema, Dhobi Talao, Mumbai-01

3. The Joint Director of Technical
Education having its Regional Office
at Pune.

4. Vishwakarma Institute of
Technology, Pune. .....Respondents.

Mr. V.M. Thorat for the Petitioner.

Mr. A.A. Kumbhakoni, Associate Advocate General with Mr. P.I. Khemani for the Respondents.

ALONGWITH

WRIT PETITION STAMP NO. 20208 OF 2006

1. Anuja Tushar Chakravarty
Age: 18 years, Adult, Indian inhabitant,
R/o Flat No.B-1, Irolette Appt.,
Juhu Tara Road, Mumbai - 49.

2. Chaitanya Kishor Chaudhary,
Adult, Indian inhabitant,
R/o. Koshe Building, Behid Hanuman
Saw Mill, Rambhag, Main Road,
Kalyan (West).

3. Poorva Anjanikumar Kausal,
Age: 17 years, Minor through her real
father Anjanikumar Kaushal,
Adult, Indian inhabitant, R/o.
A-11, Hydrabad Estate, Napeansea
Road, Mumbai - 36.

4. Ajita Vikas Ranade,
Adult, Indian inhabitant,
R/o. 702, Devdeveshwar Society,
693, Rjashri Shahu Majaraj Cross
Lane, Andheri (East), Mumbai-400069 ....Petitioners.

V/s

1. State of Maharashtra
through its Department of Technical
Education, Mantralaya, Mumbai.

2. Directorate of Technical Education
Maharashtra State, 3, Mahapalika,
Opp. Metro Cinema, Dhobi Talao,
Mumbai-01.

3. The Joint Director of Technical
Education having its Regional office
at Pune.

4. Vishwakarma Institute of

Technology, Pune. ....Respondents.

Mr. V.M. Thorat for the Petitioners.
Mr. A.A. Kumbhakoni, Associate Advocate General with Mr. P.I. Khemani for the Respondents.

CORAM: DR. S. RADHAKRISHNAN &
V. M. KANADE, JJ.

DATE : 29TH AUGUST, 2006

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. All these Petitions can be disposed of by a common judgment since the issue raised in these Petitions is common and can be dealt with in this common judgment.

2. Petitioners in these Petitions are challenging the Notification which is issued by the Respondents dated 19/08/2006 on various grounds under Article 226 of the Constitution of India.

3. Brief facts are as under:-

4. Petitioners are parents of the students who appeared for Common Entrance Test (For short “CET”), seeking

admission to the First Year Degree Course in Engineering. Respondents published information Brochure along with application forms for the admissions to the First Year Degree Course in Engineering in the first week of July, 2006. A Petition was filed in this Court challenging some of the clauses in the said information Brochure. This Petition was filed by the Association of the Management of Un-aided Engineering Colleges (Maharashtra). The said Writ Petition being Writ Petition Lodging No. 1629 of 2006 was disposed of by the Division Bench of this Court (F.I. Rebello & Mrs. V.K. Tahilramani, JJ.) by Judgment and Order dated 26/07/2006 and certain directions were given to the Respondents by the said Division Bench.

5. Thereafter, a fresh Notification was issued dated 19/08/2006 which was published on inter-net on 20/08/2006. It was stated on the Website that CAP Round-III seat allotment is scheduled to be held on 26/08/2006. The eligibility criteria in the said Notification for CAP Round-III was mentioned. It was mentioned in the said Notification that all candidate(s) who were alloted Seat in CAP Round-I

and/or CAP Round-II were not eligible to apply for CAP Round-III, irrespective of the fact as to whether such candidate(s) have confirmed their respective admission(s) or not.

6. The grievance of the Petitioners is on the restriction which has been enforced on candidates who were allotted Seats in CAP Round-I and/or CAP Round-II whereby they were denied participation in CAP Round-III on account of their selection in CAP Round-I and/or CAP Round-II.

7. The learned Counsel Mrs. Anjali Helekar and Mr. V.M. Thorat have strenuously urged and their arguments can be summarized as under:-

(i) It is submitted that impugned Notification is discriminatory and arbitrary since the meritorious candidates did not get chance of getting admission in the College and Course of their choice and that, in the process, the said seats would be offered to

the less meritorious students.

(ii) It is submitted that the Hon'ble Supreme Court has reiterated on number of occasions that merit should be the paramount criteria for admission, particularly in the case of professional courses. It is urged that, in the present case, on account of new eligibility criteria which is laid down for CAP Round-III, the said principle is given go-bye and hence it is clearly illegal.

(iii) It is submitted that the Respondent No.3 were estopped from changing the Rules and Regulations for giving admissions at the last moment.

(iv) It is submitted that on account of this procedure which was followed by the Respondents, there would be more vacant

seats at the end of all the rounds and these seats would be wasted on account of inability of the Respondents to fill up the Seats during the prescribed period as laid down by the Supreme Court.

(v) It is submitted that if the procedure prescribed by the Respondents in its Notification dated 19/08/2006 is followed, that would result in students who had secured admissions for the first time in the second round, not getting an opportunity of one betterment choice in the third round. It is therefore submitted that at least the students who had secured admissions for the first time in the second round, should be allowed to participate in the third round.

8. The learned Associate Advocate General, who appeared on behalf of the Joint Director of Technical Education, Maharashtra State, has filed his detailed affidavit-in-reply on

behalf of Respondent Nos. 1 and 2 and has submitted that if the submissions of the Petitioners are accepted, there would be no end to the admission process and, as a result, all the students would eventually be affected since the Courses would not commence at least for another 15 to 20 days and, consequently, the students would not get at least 90 working days before the end of First Term which was a direction given by the Hon'ble Supreme Court.

9. He submitted that the said provision which had been made did not curtail betterment choice which was given to the students since in the first round itself, the students could give 45 options which were considered in a computer programme and the best choice available was given to the students in the first round itself and further opportunity was given to have one betterment choice in the second round itself. He submitted that in the third round, no new seats were made available to the students who did not get admission in any course in the first and second round. He submitted that if the permission would have been granted to

the students to take part in each round irrespective of the allotments made to them in the first and second round then, in that case, it would have a cascading effect on the admission process. He invited our attention to the number of students who had applied for admissions and the number of seats which were available and the number of admissions which were secured in the first and second round.

10. We have heard the learned Counsel appearing on behalf of the Petitioners and the learned Associate Advocate General appearing on behalf of the Respondents. Considering the urgency in the case, we have heard the respective Counsel at length and we are disposing of these Petitions at the admission stage itself.

11. Hence, rule. Rule returnable forthwith by consent of the parties.

12. Before we deal with the rival submissions made on behalf of both the parties, it is essential to give a brief background in order to appreciate the controversy which is

arising in this case.

13. In P.A. Inamdar vs. State of Maharashtra (2005) 6 SCC 537, the Supreme Court has held that Unaided Institutions have the right to admit students of their choice subject to the admission procedures being fair, transparent and non-exploitive. The Supreme Court permitted a group of institutions, imparting same or similar education, in one State or more than one State, to join together to hold a CET for admission. The Supreme Court also permitted the State Government to hold such CET and the Unaided Institutions which wanted to join the Government CET were permitted to do so.

14. In the present case, the information Brochure for the Academic Year 2006-2007 was published in the first week of July, 2006. In the said Brochure, in para 6.0 it was clearly stated that only one centralized round (CAP Round-I) of allotment would be carried out by the Directorate of Technical Education, Mumbai and, thereafter, Seats remaining vacant after CAP would be filled at the Institute

level. A Petition was filed in this Court being Writ Petition Lodging No. 1629 of 2006 which was decided by this Court on 26th July, 2006 and certain directions were given to the Respondents. The directions which are relevant for the purpose of this Petition are as under:-

> ".....In our opinion this would be a fit case where this Court in the exercise of our extra ordinary jurisdiction issue directions to respondent Nos. 1 and 2, to direct that the admission process after the first round in those private colleges who are filling in seats based on CET conducted by the State will fill in the unfilled quota of seats by additional rounds. Respondents 1 and 2 to comply with this forthwith."

And finally, it was directed by the said Judgment and order as under:-

> ".....We, therefore, direct the State of Maharashtra in respect of those Private Unaided Institutions

> who are filling in seats through the CET conducted by the State of Maharashtra, to issue similar directions as in respect of the members of the petitioner institutions. Those directions to be issued forthwith."

In view of these directions, it appears that the State Government issued a Notification dated 05/08/2006 in respect of the admission process to be followed in the second round of admission process (CAP Round-II). By the said Notification, Rules 6.6, 6.7, 6.8, 7.9 and Rules mentioned in Annexure-I of the "Engineering / Technology - Rules and Institute Information Brochure for Academic Year 2006-07" were cancelled and it was laid down that all students whose names appeared in merit-list of CAP Round-I are eligible to apply for CAP Round-II. In the said Notification, Rule 13 reads as follows:-

> 13. If candidate secures an allotment in the CAP round-II and fails to confirm the admission, then the candidate will lose the claim on

> both the earlier allotment of CAP round-I and also on the allotment of CAP Round-II. Such candidates will also be debarred from participating in further additional CAP rounds, if any."

Thereafter, on 19/08/2006, another Notification was issued laying down the procedure which would be followed in respect of the third round of the centralized allotment process (CAP Round-III). In the said Notification, it was stated that all candidates to whom seats had been allotted in CAP Round-II had to confirm the admissions so made on/or before 22/08/2006, failing which the admission(s) so granted would automatically stand irretrievably cancelled and the seat for which such admission(s) is granted will be treated as vacant and therefore available for grant of admission in the next round. It was further stated in the eligibility criteria that all candidate(s) who were allotted seats in CAP Round-I and or II irrespective of the fact whether such candidate(s) had confirmed their respective admissions or not, such candidate (s) were not eligible to apply for CAP Round-III.

15. The grievance of the petitioners essentially is that by virtue of the Notifications dated 05/08/2006 and 19/08/2006, the candidates who had secured admissions in the first and second round were not allowed to take part in CAP Round-III. It has been strenuously urged before us that if the eligibility criteria, as laid down in Notification dated 05/08/2006 and Notification dated 19/08/2006 is taken into consideration, according to the petitioners, a representation was made to the students, initially, that only if they confirm the admissions by the second round then they would be permitted to participate in the third and further rounds. It is further urged that a specific direction was given by the Division Bench that additional rounds had to be conducted and these directions were not followed since the students who had secured admissions in the first and second rounds were not permitted to participate in the third round and further grievance of the students is that though they had given 45 preferences in the first round, very often, by the end of first and second round, the students could not get a seat in the College of their first and second choice and these seats finally were given to the students who were less

meritorious. These submissions made by the learned Counsel appearing on behalf of the Petitioners cannot be accepted for the following reasons.

16. The submission of the Petitioners that the representation was made that they would be entitled to apply for third round only if the admission was secured by the end of second round, is misconceived. In the Notification dated 05/08/2006, what is stated is as under:-

> "In pursuance of the orders passed by the Hon'ble High Court, Mumbai in the writ petition (L) no.1629/2006, dated 26/6/2006, the Directorate of Technical Education is conducting second round of Centralized Allotment Process (CAP) to enable eligible candidates to have at least one chance of betterment of choices, depending upon the vacancies that may be available at the start of Round-II of CAP. In view of the aforesaid court order Rule nos. 6.6, 6.7, 6.8, 7.9 and Rules mentioned in Annexure-I

of the “Engineering / Technology - Rules and Institute Information Brochure for Academic Years 2006-07” are hereby cancelled.”

Eligible Candidates : All the Maharashtra State Candidates and AIEEE candidates whose names appeared in the respective Merit lists of CAP Round-I are eligible to apply for CAP round-II.

Rule 13 of the Notification dated 05/08/2006 reads as under:-

“13. If candidate secures an allotment in the CAP round-II and fails to confirm the admission, then the candidate will lose the claim on both the earlier allotment of CAP round-I and also on the allotment of CAP Round-II. Such candidates will also be debarred from participating in further additional CAP rounds, if any.”

The contention of the Petitioners cannot be accepted since Rule 13 merely puts an embargo on the candidate

participating any further if he has been allotted a seat in Round-I and/or Round-II. The interpretation which is tried to be given that only after payment of admission fee, such candidates would be allowed to participate in Round-III is misconceived. The last line of the said rule viz. “Such candidates will also be debarred from participating in further additional CAP rounds, if any”, on the contrary, puts an embargo on such candidates from further participating in the additional rounds. The conjoint reading of Notification dated 5/8/2006 and 19/08/2006 clearly demonstrates that the Respondents had taken a decision not to permit the students who had taken admission in the seats which were allotted to them in the first and second rounds to further participate in subsequent rounds in order to ensure finality to the admission process. It is obvious that if this procedure had not been followed, the Respondents would, in effect, would have to ask each individual candidate about his preference to all the seats in various Courses and only thereafter further proceed to give admissions to the remaining candidates. Such a procedure would never attain finality within a prescribed period as is mandated by the Hon’ble Supreme

Court. In fact, in the information Brochure that was published in the first week of July, 2006, the students who were permitted to participate only in one CAP round pursuant to the directions given by the Division Bench of this Court, were given benefit of one betterment choice. The directions given by the Division Bench cannot be interpreted to mean that there would be endless additional rounds as long as each student gets seat of his choice. If such an interpretation is given to the directions given by the Division Bench of this court, it would be against the mandate given by the Supreme Court in P.A. Inamdar's case (supra).

17. The facts as disclosed by the learned Associate Advocate General disclose that in all there were about 41,777 seats available, out of which, after the first round, 23,500 students took admissions. In the second round, 25,386 students were admitted and for the third round 7,989 students remained. It is not in dispute that no new seats were made available to the students who were to be admitted in the remaining 7,989 seats. Therefore, the submission of the petitioners' Counsel that less meritorious

students would get seats in the third round cannot be accepted. The balance 7,989 seats which were available to be filled-in in the third round were the seats which were offered to the remaining candidates who had not secured admissions in the first and second round and for the first time they were made eligible to get admission for these Courses. In short, if the submission of the learned Counsel appearing on behalf of the Petitioners is accepted then, not only the students who had taken admissions in the first round viz. 23500 seats but also the students who were admitted in the second round viz. 25383 seats, would still opt for the balance seats and if this is allowed then, again, 7,989 seats would fall vacant if the students from the first and second round who were already admitted, allowed to participate in the third round. This again would require 4th and 5th round to be taken. The submission of the learned Associate Advocate General that this process would not attain finality in the available time appears to be more probable. The submission of the petitioners that, therefore, this procedure which is adopted by the Respondents is arbitrary and violative of Article 14 of the Constitution of

India, therefore, cannot be accepted.

18. Even otherwise, if, at this stage, any change is made in the procedure of admission it would have cascading effect and the entire admission process would be put in jeopardy which would result in further delay in the commencement of the Courses by the respective Colleges. We, therefore, feel that even otherwise it is not possible for us to interfere with the admission process while exercising our extra ordinary jurisdiction which is vested in us under Article 226 of the Constitution of India.

19. In the result, there is no merit in the submissions made by the learned Counsel appearing for the Petitioners. All the above Petitions are, therefore, dismissed. Rule in each of the Petitions stands discharged. Under the circumstances, there shall be no order as to costs.

(DR. S. RADHAKRISHNAN, J.)

(V. M. KANADE, J.)